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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,618	09/25/2003	Stephen T. Flock	D6476	6784

7590 02/22/2007  
Benjamin Aaron Adler  
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EXAMINER

HUH, BENJAMIN

ART UNIT PAPER NUMBER

3767

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/22/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/670,618

Applicant(s)

FLOCK ET AL.

Examiner

Benjamin Huh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-6,8,14-19,21-26,28,34-37,43,44,50 and 51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-6, 8, 14-19, 21-26, 28, 34-37, 43-44, 50-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/1/06 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-6, 8, 13-19, 21-26, & 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernaz (WO 02/053046) see US Pub No 2004/0092959 for English translation in view of Sage, Jr. et al (US Pub. No. 2003/0199811 A1) and further in view of Tapper (US Patent No. 6235013 B1). The Bernaz reference discloses a device for altering or ablating tissue comprising an actuator having an inferior surface 40 adapted to contact an abrasive material deliverable onto a tissue, a means for driving said actuator at a high frequency, see para[0025]-[0029], a container (formed by

ridges capable of holding pharmaceuticals until delivery by mechanical pressure) operably connected distally to the device having an opening therethrough adapted to deliver an abrasive material 30 therein to the tissue or to collect ablated tissue or other biomolecule therein from an ablation site on the tissue, a lubricant comprising water, also see 2004/0092959 para [0019], [0025]-[0029], [0031]-[0032], [0046]-[0047], [0052], [0055], & [0062]-[0063]. Also note that the claims do not positively claim the abrasive material or the pharmaceutical since the device is only adapted to contact an abrasive material and adapted to contain a pharmaceutical. Now even though Bernaz does not explicitly disclose the use of a separate reservoir adapted to contain a pharmaceutical attention is directed to Sage, Jr. The Sage Jr reference teaches the use of a pharmaceutical reservoir 38 in a skin abrasion device for delivering a pharmaceutical. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate the reservoir of Sage into the device of Bernaz in order to allow the delivery of pharmaceuticals for different medical treatments through the ablated skin. Now even though Bernaz in view of Sage, Jr. does not explicitly disclose a permeable membrane adapted to controllably release said pharmaceutical attention is directed to Tapper. The Tapper reference teaches the use of a membrane for a pharmaceutical in a device for medical treatment, see col. 8 line 32-42. Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate the membrane into the device of Bernaz in order to deliver and control the rate of delivery of a pharmaceutical for treatment.

With respect to claims 14-17; see para [0052].

Claims 34-37 & 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernaz (WO 02/053046) see US Pub No 2004/0092959 for English translation in view of Sage, Jr. et al (US Pub. No. 2003/0199811 A1) and further in view of Tapper (US Patent No. 6235013 B1) as applied above and further in view of Eggers (US Patent No. 6066134). Now even though Bernaz does not explicitly disclose monitoring feedback using an electrical property attention is directed to Eggers. The Eggers reference teaches monitoring feedback using a heartbeat to perform a safe ablation procedure and for monitoring a thermal property using infrared sensors. The use of an infrared detector and controller to analyze the data from an energy source and detector is inherent in the disclosed device because it measures temperature. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Eggers in the device of Bernaz to increase the safety of the ablation procedure for better patient outcome and/or to maintain safe operating temperatures.

Claims 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernaz (WO 02/053046) see US Pub No 2004/0092959 for English translation in view of Sage, Jr. et al (US Pub. No. 2003/0199811 A1) and further in view of Tapper (US Patent No. 6235013 B1) as applied above and further in view of Weaver (US Pub. No. 2002/0065533 A1). Now even though Bernaz does not explicitly disclose means for controlling feedback monitoring of a change in an optical property of said tissue during ablation attention is directed to Weaver. The Weaver reference discloses a radiant

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energy source, light detector and controller capable of monitoring a change in optical property of the tissue. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to use the teachings of Weaver in the device of Bernaz to increase the safety of the ablation procedure for better patient outcome.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Huh whose telephone number is 571-272-8208. The examiner can normally be reached on M-F: 9:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

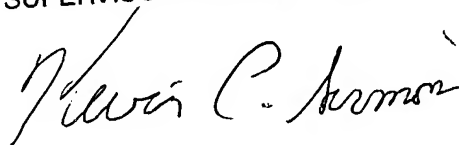
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BHH

BHH

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

A handwritten signature in black ink, appearing to read "Kevin C. Sirmons", is written over the printed name and title.